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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,077	11/15/2001	Debra Miozza	9D-HR-19939	7609
23465	7590	06/09/2004	EXAMINER	
JOHN S. BEULICK C/O ARMSTRONG TEASDALE, LLP ONE METROPOLITAN SQUARE SUITE 2600 ST LOUIS, MO 63102-2740			ZEADE, BERTRAND	
		ART UNIT		PAPER NUMBER
		2875		

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/683,077	MIOZZA ET AL. <i>JK</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bertrand Zeade	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 26 January 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 12-18 is/are allowed.
- 6) Claim(s) 1-10 and 19-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2/12/04</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitation "said base" in lines 4-6. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Santossuoso et al. (U.S.6325523).

Santosso ('523) teaches a display case with lens lighting system having:

Regarding claim 1, as shown in (figs. 1-4 and 16 and 18) a base comprising a top surface and a bottom surface, a first light element (34) coupled to the base for producing light above the top surface or beam spread angle (not numbered), and a second light element (34) coupled to the base for producing light below the bottom surface.

Regarding claim 2, the first light element (34) is oriented at an oblique angle with respect to the top surface.

Regarding claim 3 as shown in (figs. 16,18), a light element holder (34) for coupling the second light element (34) to the base, the light holder (85) comprising an outer surface and a projection extending therefrom, the projection lockably engaging the holder (85) to the base.

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (U.S.4627246).

Wilson ('246) discloses a refrigerator compartment partition and method of assembly having:

Regarding claim 22, at least one refrigeration (10) compartment (12), a pan (col. 4, lines 25-27) located within the at least one compartment (13) and operable in a plurality of modes thermal (col. 1, lines 10-15 and lines 33-50) independent of the refrigeration compartment (12/13), and insulated (50) mullion assembly (10) overlaying the pan (col. 4, lines 25-27) and thermally isolating the pan (col. 4, lines 25-27) from the fresh food compartment (13).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange ('445) in view of Santossuoso (U.S.6325523) as applied to claim 1 above, and further in view of Fletcher (U.S.4916921).

Lange ('445) discloses the claim invention except for a latch and a switch.

Fletcher ('921) discloses an ice maker with vertical cooling having:

Regarding claim 4, the base (16) bottom surface comprising a latch (col. 12, lines 52-56) projection extending therefrom, and the lock projection or retractable ears (105) engaging the light holder projection to lock the holder to the base.

Regarding claim 5, a control panel switch (94) assembly coupled to the base (16) top surface, and a control board or control circuit (not shown) coupled to the base bottom surface (16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the lighting assembly for a refrigeration appliance of Lange ('445) with the latch and the switch disclosed by Fletcher ('921), since the device of Fletcher ('921) would provide a door fastener, latch or lock of Lange ('445) with

continuous and prolonged and reliable latch or lock mechanism with one component on the door and a cooperatorating component on a face of the housing preferably is used to secure the door member in the firmly closed position, because the lock mechanism is preferred so that the door would be locked or unlocked with a key; and switching device connecting an electrical line to a pair of lights to control the lighting system in order to indicate the presence and/or the absence of a foodstuff relative to its corresponding chamber.

8. Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange ('445) in view of Fletcher ('921).

Regarding claim 6, as shown in (figs. Lange ('445) discloses a pan (col. 7, lines 62-64); and an insulated mullion assembly (114) overlying the pan, the mullion assembly (114) comprising a top surface, at least one light source (34) extending through the top surface for illuminating the pan from above,

Regarding claim 7, a light holder (44/46) for coupling the at least one light source (20) to the top surface, the light holder (44/46) selectively positionable between a locked position and an unlocked position.

Regarding claim 8, the light holder (46) comprises a cylindrical outer surface and a projection projecting therefrom.

Regarding claim 9, the mullion assembly (114) comprises a bottom surface extending opposite the top surface, and an opening extending through the top surface

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and the bottom surface for receiving the light (34/20), the opening comprising an outer perimeter and slot for receiving the projection.

Lange does not disclose a switch and control panel.

Fletcher ('921) discloses an ice maker with vertical cooling having:

Regarding claim 6, a switch assembly (94) mounted to the top surface for user selection of a pan condition

Regarding claim 10, the mullion (114) bottom surface comprises a retaining latch member (col. 12, lines 52-56) for engaging the projection.

Regarding claim 11, the mullion assembly (114) further comprises a base comprising a bottom surface extending opposite the top surface, and a control board or control means (see claim 10) mounted to the bottom surface in communication with the switch assembly (94).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the lighting assembly for a refrigeration appliance of Lange ('445) with the control panel and the switch disclosed by Fletcher ('921), since the device of Fletcher ('921) would provide a and switching device connecting an electrical line to a pair of lights and the control panel to control the lighting system in order to indicate the presence and/or the absence of a foodstuff relative to its corresponding chamber.

9. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada et al. (U.S.6619814) in view of Hagemeyer Cook et al. (U.S.5701235).

Hamada ('814) discloses a showcase having:

Regarding claim 19, a pan (9); a mullion (1) situated substantially horizontally above the pan (9); a light (35) coupled to the base for illuminating the pan (9); a control panel coupled to the base for user selection of a pan condition; and a control board coupled to said base and operatively coupled to said control panel.

Regarding claim 20, the mullion (1) comprising a base portion, a bottom cover (48), and an insulating medium therebetween.

Regarding claim 21, a pan (9) in fluid communication with the fan (33), the air supply, and the heater element (2); a mullion base (see fig. 2) situated substantially horizontally above the pan (9); a light (56) coupled to the base for illuminating the pan (9); the control board inherent regulating the fan (33), air supply, and heater element in accordance with a selected one of a plurality of modes of operation, the plurality of modes comprising at least a quick chill mode and a thaw mode well known in the art to those skilled in the refrigeration industry.

Hamada ('814) does not disclose a control panel.

However, regarding claims 19 and 21, Hagemeyer Cook ('235) discloses a low cost flexible lighting method for appliances having a control panel (15) coupled to the base for user selection of a pan condition or compartment (13); and a control board coupled inherent to the base and operatively coupled to the control panel (15),

It would have been obvious to one of ordinary skill in the art at the time the of the invention to provide the showcase of Hamada ('814) with the control panel taught by Hagemeyer Cook ('235), since the device of Hagemeyer Cook ('235) would provide a

control panel commonly having several controls with which the user can adjust the refrigerator and freezer temperatures.

***Allowable Subject Matter***

10. Claims 12-18 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record neither teach nor suggest a mullion assembly comprising a base, a first light source coupled to the base for producing light above the base and a second light source coupled to the base for producing light below the base.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bertrand Zeade whose telephone number is 571-272-2387. The examiner can normally be reached on 9:30 AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bertrand Zeade  
Examiner  
Art Unit 2875

  
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